is very likely to occur. I told Congress that I would sign H.R. 1833 if it were amended to add an exception for serious health consequences. A bill amended in this way would strike a proper balance, remedying the constitutional and human defect of H.R. 1833. If such a bill were presented to me, I would sign it now.

I understand the desire to eliminate the use of a procedure that appears inhumane. But to eliminate it without taking into consideration the rare and tragic circumstances in which its use may be necessary would be even more inhumane.

The Congress chose not to adopt the sensible and constitutionally appropriate proposal I made, instead leaving women unprotected against serious health risks. As a result of this Congressional indifference to women's health, I cannot, in good conscience and consistent with my responsibility to uphold the law, sign this legislation.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *April 10, 1996.*

The SPEAKER pro tempore. The objections of the President will be spread at large upon the Journal, and the message and the bill will be printed as a House document.

Mr. CANADY of Florida. Mr. Speaker, I ask unanimous consent that the message of the President and the bill be referred to the Committee on the Judiciary.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

APPROVING REGULATIONS TO IMPLEMENT THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995 WITH RESPECT TO EMPLOYEES OF THE HOUSE OF REPRESENTATIVES

Mr. THOMAS. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 400) approving regulations to implement the Congressional Accountability Act of 1995 with respect to employing offices and covered employees of the House of Representatives.

The Clerk read as follows:

H. RES. 400

Resolved,

SECTION 1. APPROVAL OF REGULATIONS.

(a) IN GENERAL.—The regulations listed in subsection (b) are hereby approved, insofar as such regulations apply to employing offices and covered employees of the House of Representatives.

(b) REGULATIONS APPROVED.—The regulations referred to in subsection (a) are the following regulations issued by the Office of Compliance on January 22, 1996, as published in the Congressional Record on January 22, 1996 (Volume 142, daily edition), each beginning on the page indicated:

(1) Regulation on rights and protections under the Family and Medical Leave Act of 1993, page S200.

(2) Regulation on rights and protections under the Fair Labor Standards Act of 1938, page S238.

(3) Regulation on use of lie detector tests by the Capitol Police, page S261.

(4) Regulation on rights and protections under the Employee Polygraph Protection Act of 1988, page S263.

(5) Regulation on rights and protections under the Worker Adjustment and Retraining Notification Act, page S271.

The SPEAKER pro tempore. The gentleman from California [Mr. THOMAS] and the gentleman from California [Mr. FAZIO] each will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. THOMAS].

Mr. THOMAS. Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. GOODLING], the chairman of the Committee on Economic and Educational Opportunities.

(Mr. GOODLING asked and was given permission to revise and extend his remarks.)

Mr. GOODLING. I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in support of the resolution before us with regard to congressional coverage.

While largely ministerial, they represent one more important step in bringing ourselves under the workplace laws we have long imposed, often too cavalierly in my view, on other employers.

Let me just say that I still occasionally express some wonderment that this day is finally here. The Congressional Accountability Act regulations represent the culmination of a several-year process in the Opportunities Committee in which the now-majority party repeatedly attempted to extend the laws of the workplace to our own employees, with proper enforcement mechanisms including access to the courts with jury trials.

Enactment of the Congressional Accountability Act, like the unfunded mandate legislation which was also enacted this Congress, has created a long-needed institutional brake—a yellow flag—on the passage of laws this institution too easily imposed in the past on all other workplaces while exempting itself. As importantly, the law finally extended the same workplace protections other workers have to our own employees. While these laws are not perfect there is no reason why our workers should be under different standards. And now that we are forced to comply with these laws, we will learn from experience and better identify with problems of compliance endured by our constituents. In fact, I can guarantee it. Proposals for future workplace requirements and reform of existing laws will gather a lot closer attention by every member of the Opportunities Committee and the House. And it's about time.

True, the protections of some laws had been applied in the past to the House, but the protections were hollow because employees never had the same right to court enforcement that their counterparts in the private sector and the executive branch enjoyed. And there were no signs there would ever be such enforcement! Indeed, as recently as 1991 when I had CRS do an analysis of the issue, we were still arguing over whether court enforcement posed constitutional concerns. Fortunately, that analysis, which found there were not significant concerns, growing public awareness over the double standard enjoyed by Congress, and, most importantly, the outcome of the last election, brought us here today. Yes, the issue is now bipartisan, and I am glad it is, but it is clear that real—truly effective—congressional coverage was the result of the last election. We've come a long way in a year's time.

Indeed, the only shadow cast over today is that it took so long in coming. As I have noted in the past, the irony of Congress in exempting itself from the laws it imposed on others is so obvious that one wonders how it so long escaped criticism. But I am gratified that those of us who long fought for strong congressional coverage enforcement now have amply company.

The first House resolution before us, House Resolution 400, simply provides for approval of the regulations issued by the Office of Compliance, including those under the Fair Labor Standards Act and the Family and Medical Leave Act, as applicable to House employees.

After we proceed with this resolution, we will take up House Resolution 401 which provides for educational assistance by the Office of Compliance by employees who are not involved in deciding cases, and only to the same extent as such assistance is provided by the Department of Labor to the employers it regulates. The resolution also provides for a settlement procedure to ensure that taxpayer funds are protected from abuse.

Last, we will take up Senate Concurrent Resolution 51, already passed by the Senate, applying the regulations issued by the Office of Compliance to certain of the so-called instrumentalities of the House and Senate. These are offices administered by both the House and the Senate—such as the Congressional Budget Office, the Architect of the Capitol, and the Capitol Police—and, therefore, have to be covered through a concurrent resolution.

Mr. Speaker, I support these resolutions.

Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume.

(Mr. THOMAS asked and was given permission to revise and extend his remarks.)

Mr. THOMAS. Mr. Speaker, the Congressional Accountability Act—Public Law 104–1—became effective on January 23, 1996. This law created the Office of Compliance, an independent office within the legislative branch, which is responsible for educating Congressional offices on how to comply with the laws made applicable to the Congress, as well as for providing a procedure for resolution of employee grievances, and for adopting regulations to implement these laws. These regulations must be approved by the House.

The Board of Directors of the Office of Compliance adopted regulations which were published in the CONGRESSIONAL RECORD on January 22, 1996. In anticipation of these regulations, on December 19, 1995, the House agreed to House Resolution 31 and House Concurrent Resolution 123, which provided for provisional approval of these regulations until the Committees of jurisdiction could review them and make a final recommendation to the House.

On March 12, 1996, the Committee on House Oversight considered these regulations, and voted to recommend their approval to the House. The regulations were also considered by the Committee on Educational and Economic Opportunities, which has jurisdiction over most of the laws made applicable to Congress by the act. The two House Resolutions which will be considered by the House today are the product of consultation by the two committees.

An issue addressed by the Committee on House Oversight at its March 12, 1996 meeting was supporting of time off plans. Our research indicates that these plans are available to House employers in the same way they are available to employers in the private sector. Mr. Speaker, I ask unanimous consent to insert at this point in the RECORD a memo on this issue written by the American Law Division of the Congressional Research Service.

In addition House Resolution 400 provides for approval of the regulations adopted by the Office of Compliance which are applicable to House employing offices and covered employees, as contemplated by section 304(c)(4) of the act.

Mr. Speaker, I submit for the RECORD a memorandum from the American Law Division of the Congressional Research Service.

AMERICAN LAW DIVISION,
CONGRESSIONAL RESEARCH SERVICE,
Washington, DC,

Subject: Time-off Plans Under Fair Labor Standards Act (FLSA).

Author: Vince Treacy, Legislative Attorney.

The Fair Labor Standards Act (FLSA) requires that employees be paid one-and-one-half times their regular rate of pay for each hour worked in excess of 40 hours in a workweek. 29 U.S.C. §207(a). Overtime compensation earned in a particular workweek must be paid on the regular pay day for the period in which such workweek ends. 29 C.F.R. §778.106. The Congressional Accountability Act (CAA) made the overtime provisions of the FLSA applicable to all employing offices in the Legislative Branch. Public Law No. 104–1, §203(a)(3).

Under a time-off plan, the employer may comply with the FLSA and continue to pay a fixed wage or salary each pay period, even though the employee works overtime in some other week or weeks within the pay period. The employer lays off the employee a sufficient number of hours during some other week or weeks of the pay period, so that the desired wage or salary for the pay period covers the total amount of compensation, including overtime compensation, for each workweek taken separately. The essential principle of the time-off plan is the control of earnings by control of the number of hours an employee is permitted to work.

A time-off plan cannot be applied ''to a salaried employee who is paid a fixed salary to cover all hours he may work in any particular workweek or pay-period.'' U.S. Dep't of Labor, Employment Standards Administration, The Time Off Plan. In other words, a time-off practice cannot be applied to a nonexempt salaried employee who is paid a fixed salary to cover all hours, however few or many, that he may have worked in a particular workweek. For example, if an employee was hired to work for a salary of $400 per week to cover all hours worked up to 40 in a week, then the employee would earn the same $400 whether he worked 40, 30, 20, or no hours in a week. This employee could not be compensated with time off within another week in the pay period, since the employer would have paid him for that time in any event. Since the employee was already entitled to his salary for the short workweek, the use of the hours under 40 as an offset against overtime liability owed for a separate workweek would result in a denial of the extra overtime compensation the employee was entitled to under the FLSA.

The Department of Labor expressly disapproved time-off plans for workers with a guaranteed salary in Opinion Letter of May 27, 1964. The employer wanted to guarantee certain employees 40 hours of work or pay each week. Employees would receive a minimum week's pay in any week even though they may have worked fewer hours in the week. The proposed plan ''is not a bona fide time-off plan in that the employee is guaranteed a definite number of hours of work or the equivalent in pay each workweek. The required control of earnings through control of the number of hours an employee is permitted to work in a pay period is lacking.''

A similar problem would arise if an employee were expressly hired to work 35 hours per week for a fixed salary of $350. That employee could not be compensated with hours-off under 40 in a week, since those hours are unpaid under the employment agreement. The time off for such an employee must be subtracted from the 35 hours in the regular workweek. An employee who worked 50 hours in one week could then be compensated by receiving the full $350 salary for 20 hours of work in the second week. In the second week, $200 would represent compensation for the 20 hours actually worked, while $150 would be cash compensation for the 10 hours of overtime in the first week.

A time-off plan allows an employer to control earnings by controlling the number of hours worked. If the employee works more than 40 hours in a workweek, the employee can be required to take one-and-one-half hours off for each overtime hour within the same pay period. This produces virtually the same total earnings as if the employee had work only 40 hours in each workweek in the pay period.

Salaries status does not preclude the use of time-off plans for nonexempt employees. Time-off plans are barred only when the employee is guaranteed the salary regardless of the number of hours actually worked. Salaried nonexempt employees are customarily required to work a fixed number of hours for their pay. Absences must be charged to leave banks for vacation, sickness, or personal use. The actual salary is reduced (''docked'') only when leave is denied or exhausted. These salaried employees may be given time off with pay in lieu of cash overtime, since the pay for the compensatory time off represents pay they would not otherwise have received.

In the state and local public sector, compensatory time off may be carried over to other pay periods, and can be accumulated into banks of up to 240 hours, or 480 for public safety employees. In the private sector, however, the overtime hours cannot be accumulated and the time off cannot be given in another pay period. This policy is based in part on the possibility that the employer may go out of business, or file for liquidation under the Bankruptcy Code, and thereby eliminate employee overtime compensation entirely.

The Congressional Accountability Act expressly adopted the private sector policy, and prohibited the accumulation of compensatory time. ''Except as provided in regulations under subsection (c)(3), covered employees may not receive compensatory time in lieu of overtime compensation.'' Public Law No. 104–1, §203(a)(3).

Time-off plans were approved by the Court in Dunlop v. State of New Jersey: :''The restriction that time off for overtime be granted within the same pay period as earned mirrors the stricture placed upon monetary payments for overtime.'' 522 F.2d 504, 510 (3d Cir. 1975), affirming 364 F.Supp. 156 (D.N.J. 1973), vacated on other grounds, 427 U.S. 909 (1976). Time-off plans have been approved by the Wage-Hour Administrator in Opinion Letters. DOL Opinion Letter No. 913 (Dec. 27, 1968), quoted with approval, 522 F.2d at 509–510, 364 F.Supp. at 158.

The use of time-off plans was first suggested to the House in 1990 by Betty Southard Murphy, an attorney who was a former Wage and House Administrator at the Department of Labor.

Overtime compensation need not be paid as money wages. Under proper and rigid circumstances, employees may receive their overtime compensation as compensatory time off. Such plans are only permitted as an alternative to overtime payments if the time off is taken during the same pay period in which the overtime is earned. Presentation by Betty Southard Murphy Before the Administrative Assistants Association, U.S. House of Representatives, Washington, DC, Oct. 18, 1990 (emphasis in original).

The time-off plan must meet three requirements. (1) The employees must be either hourly or salaried; employees paid by piecework, commission, or amount of production are excluded. (2) The wage agreement must provide a fixed number working hours per week; employees who work fluctuating hours for a fixed salary do not qualify. (3) The pay period must be either bi-weekly, semi-monthly; or monthly; the plan cannot be applied to employees whose pay period is weekly.

Furthermore, time-off plans require careful records, because the employer may not at any time owe the employees overtime compensation. Payroll records should clearly indicate that the premium rate of one-and-one-half of the regular rate of pay is paid for all overtime hours worked. The employer must maintain an individual account for each employee, with credit for the appropriate amount of time. ''Overall, time-off plans are rarely used because they are difficult to administer—the employer must anticipate workload requirements in all weeks of the established pay period.'' Betty Murphy, Guide to Wage and Hour Regulation at 46 (BNA, 1987).

Under the Portal-to-Portal Act of 1947, an employer must act ''in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpretation'' of the Administrator of the Wage and Hour Division of the Department of Labor. 29 U.S.C. §259. The Office of Compliance has ruled that the Portal-to-Portal Act applies under the Congressional Accountability Act. 122 Cong. Rec. S222 (daily ed., Jan. 22, 1996).

The Office of Compliance has stated that ''[t]ime-off plans are authorized under section 7(a) of the FLSA. See, e.g., Wage and Hour Administrator Opinion Letter, issued 1950; Wage and Hour Opinion Letter dated December 27, 1968. Thus, employing offices are authorized to use such plans under section 203 of the CAA.'' It would therefore appear that employing offices may rely on the written opinions of the Wage and Hour Administrator of DOL in adopting time-off plans.

In the House of Representatives, several provisions should be noted. Title 2 of the U.S. Code provides that ''[n]o person shall be paid from any clerk hire allowance if such person does not perform services for which he receives such compensation in the offices of such Member or Resident Commissioner in

Washington, District of Columbia, or in the State or the district in which such Member or Resident Commissioner represents.'' 2 U.S.C. §92–1.

The Rules of the House of Representatives provides that a Member or officer of the House ''shall retain no one under his payroll authority who does not perform official duties commensurate with the compensation received in the offices of the employing authority.'' Rule XLIII, clause 8 (1995). The Members' Congressional Handbook provides that ''Members may not [emphasis in original] retain a Clerk Hire employee on their payroll who does not perform official duties commensurate with their compensation,'' and that ''Clerk Hire employees must perform the duties for which they are compensated within the Washington, D.C., or district congressional office(s) of the Member.'' See section II.A, clauses 2, 3, at page 5. Moreover, Title 31 of the U.S. Code provides that ''[a]ppropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.'' 31 U.S.C. §1301(a).

An employing office in the House of Representatives may adopt a time-off plan. It is advisable that the plan be in writing. The plan should note that its provisions revoke and supersede all prior customs, practices and usages concerning time and pay. The plan should stipulate that all covered employees, whether salaried or hourly, are employed for a fixed workweek, such as 40 hours per week. The plan should also require that all hours be strictly accounted for, either as hours worked or as hours charged to paid leave, such as annual, sick, personal, holiday, emergency, or administrative leave.

Mr. Speaker, I reserve the balance of my time.

Mr. FAZIO of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, my friend from California, Chairman THOMAS, has accurately described the purpose of the resolution. It simply approves the regulations issued by the Office of Compliance.

Reforming employment practices in the House took bi-partisan effort. Members from both sides of the aisle were steadfast in the reform efforts, and we were able to work through all the obstacles and pass the law.

I want to single out for praise the efforts to Chairman THOMAS, Representative SHAYS, Representative HOYER, and many other Members of this Congress, as well as Representative Swett in 103d Congress. They deserve recognition for their dedication to this reform.

House Members of both parties overwhelmingly supported this bill, and individual Members should take credit for their part in it. Remember, the underlying purpose of this law—imposing the same sandards on the House as on the private sector—enjoyed the same strong bi-partisan support in this Congress that it enjoyed in the last Congress.

I think we can be proud, individually and as an institution, that we have arrived at this point. Furthermore, as I have surveyed my colleagues, I find them universally supportive of the new law, and the workplace fairness which it brings to the House. There is a genuine desire to comply with the law, and Members seem eager for information to help them comply.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. THOMAS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. THOMAS] that the House suspend the rules and agree to the resolution, House Resolution 400.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

DIRECTING THE OFFICE OF COMPLIANCE TO PROVIDE EDUCATIONAL ASSISTANCE TO EMPLOYING OFFICES OF THE HOUSE IN SAME MANNER AS SUCH ASSISTANCE IS PROVIDED TO THE PRIVATE SECTOR THROUGH THE DEPARTMENT OF LABOR

Mr. THOMAS. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 401) directing the Office of Compliance to provide educational assistance to employing offices of the House of Representatives regarding compliance with the Congressional Accountability Act of 1995 and requiring employing offices of the House of Representatives to obtain the prior approval of the chairman and the ranking minority party member of the Committee on House Oversight of the House of Representatives of the amount of any settlement payments made under such Act.

The Clerk read as follows:

H. RES. 401

Resolved,

SECTION 1. INTERPRETATION AND ADVICE BY OFFICE OF COMPLIANCE.

In carrying out its duties under section 301(h) of the Congressional Accountability Act of 1995, the Office of Compliance shall, through interpretive bulletins, advisory opinions, and other methods, provide educational assistance to employing offices of the House of Representatives in the same manner as, and to no lesser extent than, such assistance is provided to other employers through the Department of Labor with respect to laws made applicable to such offices under that Act, except that any employees of the Office of Compliance who provide such assistance may not participate in deciding complaints filed under section 405 of the Act or in deciding petitions for review filed under section 406 of the Act.

SEC. 2. APPROVAL OF AMOUNT OF SETTLEMENT PAYMENTS.

No employing office of the House of Representatives may enter into any settlement of a compliant under the Congressional Accountability Act of 1995 which includes the payment of funds unless the office has obtained the prior approval of the chairman and the ranking minority party member of the Committee on House Oversight of the House of Representatives, acting jointly, regarding the amount of funds to be paid.

The SPEAKER pro tempore. The gentleman from California [Mr. THOMAS] and the gentleman from California [Mr. FAZIO] each will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. THOMAS].

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Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Section 301(h) of the Congressional Accountability Act—Public Law 104–1—requires the Office of Compliance to carry out a program of education for employing authorities of the legislative branch with regard to the laws made applicable to Congress by the act. The purpose of this section was to ensure that employing offices have the information necessary to comply with the act.

On March 12, 1996, the Committee on House Oversight agreed to direct the Office of Compliance to provide educational assistance through interpretive bulletins, advisory opinions, and other methods with respect to the regulations adopted by the Office of Compliance. It is important to note that this assistance is currently provided to employers in the private sector by the Department of Labor.

The Office of Compliance has publicly claimed that they cannot issue advisory opinions. The authority to issue advisory opinions, in the committee's opinion, is a necessary function related to the authority to issue regulations. It seems a little disingenuous to adopt regulations. It seems a little disingenuous to adopt regulations and then claim an inability to explain or interpret those regulations. Therefore, H.R. 401 expresses the will of the House that the Office of Compliance provide educational assistance through various methods. Advisory opinions are only one of the many ways such assistance may be provided.

Mr. Speaker, I include for the RECORD a copy of an analysis on this issue from the American Law Division of the Congressional Research Service.

The document referred to is as follows:

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, April 15, 1996.

To: Committee on House Oversight; attention: Dan Crowley.
From: American Law Division.
Subject: Examination of Authority of Office of Compliance to Issue Advisory Opinions.

This memorandum is submitted in response to the committee's request, as discussed with Dan Crowley of the committee staff, concerning the subject noted above. Specifically, the committee has asked that we examine the position taken by the Office of Compliance that it cannot, consistent with the scheme of the Congressional Accountability Act of 1995[1] (CAA or the act), issue advisory opinions.

On March 12, 1996, the Committee on House Oversight (committee) considered, but did not report, two resolutions to approve regulations adopted by the Board of Directors (Board) of the Office of Compliance (Office) to implement the act.[2] The first section of

[1] Footnotes at end.